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Current Topics.

Lord Macmillan on Toleration.

LORD MACMILLAN, who unites in himself the distinguished office of a Lord of Appeal in Ordinary with that of President of the International Congress of Comparative Law, was happily inspired when in his latter capacity he entitled his opening address at The Hague last week "A Discourse on Toleration"—a theme which, as he truly said, was one consonant with the outlook of the Dutch people, whose intellectual liberality has always been one of their outstanding characteristics, along with their profound regard for law and order. Toleration, as LORD MACMILLAN said, is the finest flower of a liberal education. But how, it may be asked by some, do we relate this great virtue with the aims of the lawyer? By approaching the study of law as developed in other countries with unprejudiced minds and with the honest desire to discover whether their juristic outlook may not teach us lessons of value. As LORD MACMILLAN reminded us, all parts of the world are daily being brought into closer contact with each other by greatly improved means of transport, and in view of this the law must develop a new technique by seeking to remove all those obstacles to freer commercial intercourse created by this or that individual system of jurisprudence owing to the form of its mercantile documents. At one time, as we all know, the Roman law was the law of practically the civilised world. No particular system is now likely to achieve the same ascendency, but out of the labours of such bodies as that with which LORD MACMILLAN is officially connected, it may be possible to envisage the creation of a commercial code of universal validity. It is a consummation devoutly to be wished.

The Law's Delays.

AN hour before the House of Commons adjourned for the summer recess, Mr. CLEMENT DAVIES, who, it may be remembered, was a member of the Peel Commission, raised the subject of the law's delays with the suggestion that the commission's report had been ignored and, he supposed, been "pigeon-holed and put away, like the reports of other commissions." The speaker recalled the words he used in the course of his own report to the effect that there must always be three elements in the administration of justice in all civilised communities—the jurisprudence which was the subject of administration and legislation, the judges upon whose shoulders the burden of that administration rested, and the machinery whereby the judges strove to effect that administration—and made it clear that his criticism was directed solely to the third of these. Considerations of space prevent our dealing with the speaker's indictment at the length it deserves, and we must content ourselves with allusion to one point. "There seems," he said, "to be some extraordinary feeling that if a judge loses five minutes of his time, somehow or other the whole of the British Constitution will come to an end. He must be occupied from 10.30 in the morning until 4 or 4.15 in the afternoon. Because he is kept there all that time litigants must be kept there for hours and days, with their witnesses, and juries must also be kept lest, perchance, the judge might be unoccupied for five minutes. . . . The cost to the State if a judge went away for a whole day and had nothing to do would not amount to more than £15 gross, but it would amount to less than that . . . What must be the cost to the State of men taken away from their ordinary work—juries, parties, witnesses? Count up what they cost for a day. It must amount to hundreds of pounds." The Attorney-General agreed with the main point raised with regard to the hardship inflicted and the waste of time when witnesses and others were kept "hanging about," but he did not think that the speaker gave enough notice to the fact that the judges were aware of the hardship. Cases which would obviously not be reached were, it was intimated, often released, while provision had to be made for cases being settled unexpectedly. Sir DONALD SOMERVELL admitted that it might be that too much attention was paid to the possibility of a judge finishing his work before the end of the day, and thought that the real answer to the problem was, probably, the extension of the system of fixing days, because that, in itself, did involve information being obtained as to the length of a case, and so on.

Prospects of Legislation.

THE Attorney-General agreed that there had been a long period of silence following the publication of the report of the Peel Commission. But things had been going on in the way of researches of sub-committees, a consideration of their recommendations, and the putting into proper form of the recommendations of the commission. It was urged, moreover, that when dealing with matters of legal procedure it was much easier to see the general line on which reform was desirable than to translate that into actual day-to-day rules of procedure. As to the suggestion that the report of the Peel Commission had been ignored, Sir DONALD drew attention to the appointment of three committees, the setting up of which was recommended by the commission itself. The Quarter Sessions Committee reported in July, 1936, the Circuit Towns Committee, a month later, while the matter considered by the Shorthand Writers' Committee was in hand, and would, it was hoped, come into operation next October. It was not, the Attorney-General intimated, until the committees reported that a complete picture was obtained. The recommendations requiring legislation and those not requiring legislation were largely interlocked. The former had been under active consideration and had reached a stage when it was hoped to take decisions on them shortly and to present a Bill to Parliament. The Attorney-General made particular reference to what he agreed, and had long felt, to be one of the vital things in the matter, namely, the fixing of days. "With regard to this matter," he said, "and the other matters which are mostly set out on p. 105 of the report, I am in a position to tell the House that not only have they been considered, but draft rules are already in being, and under consideration by His Majesty's judges and others concerned with a view to getting them in proper order and bringing them into operation as soon as possible." It was not said that the decisions taken covered every point, but draft rules were being considered, in particular with regard to the recommendations in 2 (1) to extend the system of fixing dates as far as it was possible.

Motor Headlights: Anti-Dazzle Rules.

THE Ministry of Transport recently issued a reminder that the Road Vehicles Lighting Regulations, 1936, which were made on the recommendation of the Transport Advisory Council, will come into force on 3rd October, and users of motor vehicles whose headlights do not comply with the requirements are urged to take appropriate steps without delay. The main contents of the regulations were indicated some time ago in these pages, but it may be repeated that from the date above-mentioned the beam of front electric lamps exceeding 7 watts in power must be either (*a*) permanently deflected downwards, or (*b*) capable of being deflected downwards, or both downwards and to the left at the will of the driver, or (*c*) extinguishable by a device which substitutes a dipped light (in effect the double filament arrangement), or (*d*) extinguishable by a device which brings into or leaves in operation a deflected beam from another headlamp so as not to dazzle at a distance of 25 feet a person whose eye-level is 3 feet 6 inches from the ground. Electric lamps of less than 7 watts power which do not comply with the regulations must be fitted with frosted glass or its equivalent.

Recent Local Government Legislation.

TO-DAY we give some account of the eighteenth annual report of the Ministry of Health so far as it may be considered of interest to our readers (p. 660 of this issue). There are, however, a few measures which have been before Parliament during the past session and have become law since the end of the year with which the report is concerned. These are deserving of short mention here. The Local Government Superannuation Act, 1937, which was alluded to in these columns during its passage through Parliament, places a general obligation on local authorities to have superannuation schemes for their employees. The Widows', Orphans' and Old Age Contributory Pensions (Voluntary Contributors) Act, 1937, will enable some two million persons outside the scope of the present contributory pensions scheme to obtain on a voluntary basis similar pensions for themselves and their families. The income limit is £400 a year for men and £250 a year for women, special advantages being offered to those who apply and are accepted before 3rd January, 1939. The Physical Training and Recreation Act, 1937, confers upon local authorities increased powers of making provision for the objects of the measure which fall within the purview of the Ministry of Health and the Board of Education. A memorandum indicative of the extent of these powers has been issued by the National Advisory Council for Physical Training and Recreation. Finally, the Public Health (Drainage of Trade Premises) Act, 1937, provides that local authorities, which, prior to the Act, generally had an option in the matter, shall receive and dispose of trade effluents subject to reasonable safeguards against any undue burden falling on the rates.

Right to Work Minerals: A Scottish Decision.

IN view of the general importance of the case some mention should be made of the recent decision of the Second Division of the Court of Session reversing a decision of the Railway and Canal Commission, which dismissed an application by Glasgow coalmasters under the Minas (Working Facilities and Support) Act, 1923, to work minerals under certain lands in Renfrewshire. Section 4 (1) of that Act provides that neither the right to work minerals nor an ancillary right shall be granted under the Act unless it is shown that it is not reasonably practicable to obtain the right in question by private arrangement for various reasons, among them being "that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable" (*ibid*, para. (*d*)). The substantial question in the case in consideration was whether, in view of the foregoing provisions and those of that Act as a whole and the Mining Industry Act, 1926, the reasonableness of the refusal was to be considered in light of the facts up to the time of the refusal or whether the matter should also be considered in the light of facts which the inquiry disclosed. The Railway and Canal Commission came to the former conclusion (and dismissed the application for want of evidence of unreasonable refusal), the Lord Justice-Clerk (LORDS MACKAY, PITMAN and WARK concurring) to the latter. The case was therefore ordered to go back to the Commissioners to consider the question of reasonableness in light of all the facts as now ascertained and in the light of the prospective user of the land for housing requirements. A motion for leave to appeal to the House of Lords is to be heard later. Further particulars of the case are given in *The Times* of July 24th, in a report from *The Times* Correspondent (Edinburgh) from which the foregoing note has been prepared.

Recent Decision.

In *Rex* v. *Stone* (*The Times*, 30th July), the Court of Criminal Appeal dismissed an appeal by one who was recently convicted of murder at the Central Criminal Court. To a written question submitted by the jury after their retirement: "If as a result of an intention to commit rape a girl is killed, although there was no intention to kill her, is the man guilty of murder?" Lord HEWART, C.J., replied: "Yes, undoubtedly," and the Court of Criminal Appeal intimated that the foregoing answer was right: *Reg.* v. *Serné*, 16 Cox C.C. 311; *Director of Public Prosecutions* v. *Beard* [1920] A.C. 479, applied.

The Mortgage of a Business and of Business Premises.

I.

THE assets of a business, whether wholesale or retail, are frequently mortgaged by an omnibus deed without special consideration being given to the particular items of property to be charged; but there may often be assets of such a character as to require special consideration; and, in the case of factories, difficult questions may arise in regard to trade fixtures.

The principal clauses usually to be inserted in a mortgage of a small trader's business are as follows:—

(1) A legal charge or a demise, or a sub-demise, as the case may be, of the premises.

(2) An assignment of the goodwill and the right to use the mortgagor's name in the business.

(3) An assignment of the present and future book debts, with a power of attorney as regards the latter for the mortgagee to sue for and recover them in the mortgagor's name.

(4) Covenants on the part of the mortgagor to repair and insure the premises; and to keep proper books of account of the business; and also, in very complicated cases, to have them audited at his expense.

(5) Power for the mortgagee to appoint a receiver and manager.

(6) A power of sale, exercisable if the mortgagor becomes bankrupt, or a receiving order is made against him, or he makes a composition or arrangement with his creditors; or, in the case of leasehold property, if he fails to perform the covenants.

(7) An attornment clause.

The principal money is usually made payable by instalments.

If the premises are leasehold, the consent of the landlord may have to be obtained, though he cannot now refuse it unreasonably.

Book Debts.

The security may extend to future as well as present book debts; and it may, if desired, include also the cash takings of the business, though in the case of a small trader without other resources this may lead to the rapid bankruptcy of the business and should not be insisted on without careful consideration.

The term "book debts" means debts arising out of a transaction which would in the ordinary course of business ultimately be entered in the books; it is not essential that it should be so entered, even if the tradesman keeps regular books, which he may not do (*Shipley* v. *Marshall*, 14 C.B. (N.S.) 566). But securities for the payment of a debt will not usually be included; though securities such as bills of exchange received in the ordinary course of business and entered in the books, even if they have been handed to a banker for discounting but have not been actually discounted, may be covered (*In re Stevens* [1888] W.N. 110, 116; *Dawson* v. *Isle* [1906] 1 Ch. 633).

The present book debts should be mortgaged by a legal assignment with a proviso for redemption within s. 136 of the Law of Property Act, 1925. If the mortgage be under seal, the mortgagee will have the statutory power of sale, but this is at best of little practical value. The mortgagee should require to be furnished with a list of the debtors, and should inquire of the mortgagor as to the state of accounts between him and each debtor, and whether the latter has any right of set-off or other equity which he can set up against him. The appointment of a receiver is frequently made by the mortgage deed itself.

The mortgagee under a mortgage by legal assignment will be liable in damages to the mortgagor if the debts are lost through his gross negligence in not taking proceedings to enforce payment; and though the giving of time to the debtor may sometimes be the most prudent course to pursue and of itself insufficient to make him liable for consequential loss, it is probably not advisable for him to agree to grant time without express power (*Williams* v. *Price*, 1 S. & S. 581; *ex parte Mure*, 2 Cox 63). Provisions should, therefore, be inserted in the mortgage negativing the mortgagee's liability for loss of the debt through failure to take proceedings; and power to give time to the debtors and to make a composition with them or to accept security for payment may be desirable.

Whether or not immediate notice of the mortgage should be given to the debtors must depend on the particular nature of the business. If such notice will ruin the credit of the mortgagor and cause irreparable damage to his business, it may be prudent for the mortgagee to defer giving notice until he has decided to take possession, or even until the last possible moment prior to commencing proceedings against the debtor for recovery of the debt. But if the mortgagee adopts this course he must be prepared to face the serious risks that he may be postponed to a subsequent assignee or incumbrancer who does give notice; that the debts being "debts due or growing due" to the mortgagor "in the course of his trade or business" will remain in his reputed ownership and will, if he becomes bankrupt, pass to his trustee free from the mortgage; and that some right of set-off or equity may subsequently arise between the debtor and the mortgagor which the former will be able to set up against the mortgagee. Further, in the absence of notice the debtor will obtain a good discharge by paying the debt to the mortgagor and cannot be compelled to pay it over again to the mortgagee.

A good illustration of the danger of not giving notice is to be found in the case of *In re Collins* [1925] Ch. 556. In this case a surveyor and valuer in a large practice mortgaged his contracts with clients for advising and other business in connection with assessment and valuation appeals, and the money to become due on completion thereof, and the mortgagee in order to preserve his credit decided not to give notice of his mortgage to the clients. The mortgagor became bankrupt, and the mortgage was held invalid as against his trustee as regards fees actually earned at the commencement of the bankruptcy. The case also illustrates another important principle, viz., that an assignment by a trader of the future receipts of his business is inoperative against his trustee in bankruptcy, even if notice be given, as to receipts subsequent to the bankruptcy. The trustee who had employed the mortgagor and some of his clerks to carry out the pending mortgaged contracts was held entitled to the fees accruing after the commencement of the bankrupty. The grounds of the decision on this latter point were that the mortgagor was carrying on a business, and even though there was a certain amount of technical skill involved, it was not a case where the money was payable under contracts made in reliance thereon; in which case the mortgage might have been effective, since, apart from the above doctrine in regard to future earnings and that of reputed ownership, which is now confined to book debts in a business, a mortgage of a chose in action is good against the mortgagor's trustee in bankruptcy, whether notice is given or not (*In re Wallis* [1902] 1 K.B. 719).

Future book debts probably cannot be mortgaged by legal assignment, but an assignment in general terms of the book debts in the mortgagor's present or any future business has been held by the House of Lords to be effectual in equity (*Tailby* v. *Official Receiver*, 13 A.C. 523).

A power of attorney to sue for and receive the future debts in the mortgagor's name should be inserted; and also a similar provision as to the mortgagee's liability for omitting to sue as in the case of a legal assignment. Notice cannot, of course, be given until each debt arises, and it may be preferable in order to enable the mortgagor to continue the business

to allow him to receive the moneys from time to time due and treat the security as in the nature of a floating charge (see *Illingworth* v. *Houldsworth* [1904] A.C. 355, where the company created a similar type of security).

The mortgagor will become a trustee of the debts if and when received by him to the extent of the mortgage debt, and must account for them to the mortgagee; and it has recently been held that the latter may, when the former has money actually in hand representing the debt, obtain a four-day order for payment against him, and if he fails to comply with it, may apply for a committal order (*Cotton* v. *Heyl* [1930] 1 Ch. 510).

The security, provided it be duly completed by notice, will be valid against the mortgagor's trustee in bankruptcy (*Tailby* v. *Official Receiver, supra; In re Lind* [1915] 2 Ch. 345); and it appears to be unnecessary for this purpose to register it as a bill of sale under s. 43 of the Bankruptcy Act, 1914.

(To be continued.)

Ministry of Health Report, 1936-1937.

THE following note on the eighteenth annual report of the Ministry of Health (H.M. Stationery Office, price 5s. net) deals exclusively with matters which may be considered of interest to practitioners; it is in no sense an analysis which would necessarily cover ground within the province of the local government official and contain matter with which the majority of our readers might not be directly concerned.

Recent statutes of importance in the branch of law with which the report is concerned are the Local Government (Financial Provisions) Act, 1937, the Tithe Act, 1936, the Midwives Act, 1936, the Public Health Act, 1936, the Unemployment Insurance Act, 1934, and the National Health Insurance Act, 1936. The first, which has already been dealt with in our columns, gives effect to recommendations made in the report to Parliament as a result of the investigation required to be made by the Minister of Health in consultation with representatives of local authorities under s. 110 of the Local Government Act, 1929, with reference to the distribution among local authorities of the general exchequer contribution during the third "block grant" period which began on 1st April, 1937, and is of five years' duration. So far as the distribution between the counties and county boroughs is concerned the Act effects certain alterations in regard to the sparsity and unemployment factors, but leaves the basis of the formula of weighted population unchanged, while no change is introduced into the scheme whereby the county districts share in the grant made to a county. In London the present method of internal distribution is maintained with the addition of a separate scheme designed to equalise over the area in question the loss on account of derating. Moreover the total amount of the general exchequer distribution for the third period, which on the basis of the Local Government Act, 1929, would have amounted to £48,349,000, is reduced to £46,172,000, the Act of 1937 providing for deductions to be made in respect of the discontinuance of the provision for the payment of contributions by local authorities under the Unemployment Act, 1934, the transfer of trunk roads from county councils to the Ministry of Transport, and for an addition as compensation for the cessation of male servants' licence duties. The Act also provides for alterations of the provisions of the Act of 1929 relating to the calculation of the additional exchequer grants which in certain circumstances will assist local authorities in whose areas the weighted populations have fallen (see pp. 165-169 of the report).

The position consequent upon the derating of tithe rent-charge has been so frequently dealt with in our pages that no further treatment is necessary here, but it may be recorded that, according to the report (pp. 169-170), in anticipation of the general scheme of distribution, grants on account, amounting to £322,050, in respect of the year beginning on 1st October, 1936, were paid to most rural district councils in January of the present year.

The Midwives Act, 1936 (p. 7 of the report) imposes on the local supervising authority the duty of providing an adequate number of whole-time salaried midwives. Proposals for this purpose were required to be submitted to the Minister not later than 30th January, 1937, and to be carried into effect not later than 30th July, 1937, apart from extensions of time which the Minister has found it necessary to grant in a relatively small number of cases. The local supervising authorities are those specified in the Midwives Acts, 1902-1926, and are county councils, county borough councils, and councils of the county districts (*a*) to which the function was delegated under s. 9 of the Midwives Act, 1902, before its repeal in 1918, or (*b*) which have been or may be constituted such authorities by order of the Minister under s. 62 of the Local Government Act, 1929. Eight orders under the last-named section were made during the year.

Mention (p. 152) is made of the consolidation in regard to the bye-law making powers of local authorities effected by the Public Health Act, 1936, which comes into force in October, particularly to the re-casting of the powers relating to building bye-laws. In regard to Private Bill legislation (p. 148), attention is drawn to a series of "Standard Clauses" (H.M. Stationery Office) which has been prepared in accordance with the recommendations of a report of July, 1936, of a special committee appointed by the Chairman of Ways and Means to consider a number of clauses of common occurrence in such Bills. The inquiries of a Select Committee appointed in December by the House of Commons to review existing procedure in regard to Bills containing clauses of the above character were still in progress at the end of the period with which the report is concerned. Attention is drawn to the tendency to duplicate the law by including in Bills provisions which are already available to the promoters under general enactments, and an extreme example is cited of the case of a Bill of a rural district council in the Session 1935-36 which originally consisted of seventy-five clauses, reduced to fifteen as a result of discussion with the promoters.

In regard to public assistance (see p. 93) the most important event recorded in the report is the coming of the second appointed day under the Unemployment Act, 1934, which was fixed by an order of the Minister of Labour as 1st April, 1937. Indeed, the taking over by the State of the function of providing assistance to the large majority of the able-bodied unemployed and the setting up of a special organisation for that purpose are described as by far the most significant changes affecting poor law administration which the last seven years have witnessed. During the year under review a fourth authority has adopted arrangements whereby the assessment of applications for relief has been assigned by the public assistance authority to salaried "adjudicating officers." This system was inaugurated by a fifth authority on 1st April, 1937, while a sixth has made application for the adoption of the system which, it should be observed, requires legislative sanction (see s. 5 of the Poor Law Act, 1930.)

The National Health Insurance Act, 1936, which came into operation on 1st January, 1937, is a purely consolidating measure, but it has necessitated the revision and consolidation of numerous regulations and orders which are now being effected (p. 175). The report states that the revised regulations and orders relating to health insurance will be published as soon as possible in a single volume. Some cases in which remuneration was withheld from insurance doctors and chemists are briefly outlined (p. 191).

Progress during the year in housing (p. 110) and in town and country planning (p. 129) are duly indicated. Localities declared to be clearance areas during the year numbered

4,746; while 3,726 clearance orders and 488 compulsory purchase orders were confirmed, terms being arranged by local authorities for the purchase by agreement of 186 whole clearance areas and twenty-two part areas. Bye-laws made by twelve local authorities in respect of working-class houses in general, and by thirteen in respect of houses let in lodgings, were confirmed (see Housing Act, 1936, s. 6). Of appeals to the High Court, mention is made of *Re London (Hammersmith) Housing Order: Application of Land Development Ltd. and Another* (1936), 2 All E.R. 1063, and *Horn* v. *Minister of Health* [1937] K.B. 164.

In regard to planning, seventy-six schemes were submitted to the Minister for approval, compared with twenty-one during 1935-36, and five during 1934-35. Sixteen schemes were approved during the year, and it is thought that nearly, if not quite, all the 139 schemes which have been adopted in draft by local authorities at the end of the year will be submitted for approval during the current year. The constitution of twenty-two new Joint Committees was reported to the Minister during the year, making 133 in all, while progress is reported in regard to the preservation of rural amenities, *inter alia*, by the voluntary adoption of restrictions in agreement with planning authorities on the part of landowners themselves. Appeals under operative schemes and under s. 10 of the Town and Country Planning Act, 1932, numbered 1,011 during the year, the planning authority succeeding in over 60 per cent. of decided cases. The report contains some valuable notes on the preparation of schemes (p. 134), attention being drawn to the agreement between the Ministers of Health and Transport in regard to the statutory powers restricting ribbon development that major roads should be dealt with under the Act in preference to reservations under schemes, and to the issue in February, 1937, of the revised edition of the Model Clauses. All schemes which have been approved since the beginning of the present year have been based on the revised model.

With regard to accounts, the report recalls the decision relating to expenses covered by s. 294 of the Local Government Act, 1933, and indicates that the Minister gave his sanction, under the proviso to s. 228 (1), to items of expenditure in 1,798 applications and withheld it in 235 cases (p. 175). Mention is also made of the fact that during the year the issue of orders under s. 293 (2) of the same Act for the purpose of applying its provisions to Joint Hospital Boards was completed and in no case was it necessary for the order to be provisional (p. 36).

Other matters which must be dismissed with a mere mention are the issue of the Milk (Special Designations) Order, 1936, which came into operation on 1st June of that year (p. 54), the Public Health (Imported Food) Regulations which come into operation next January (p. 58), and certain orders made by local authorities under the Public Health (Shell Fish) Regulations, 1934.

Company Law and Practice.

Security for Costs by a Plaintiff Company.

THE question of security for costs so far as it affects a plaintiff company is governed by the Companies Act, 1929, s. 371, and R.S.C., Ord. 65, r. 6. Section 371 reads as follows:—

"Where a limited company is plaintiff or pursuer in any action or other legal proceeding any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given."

It will be seen that the section is a wide one and the burden on the defendant who is seeking to bring it into play is simply to adduce credible evidence to the effect that the company may prove unable to pay his costs. The section applies only to a limited company: see *The United Ports and General Insurance Co.* v. *Hill*, L.R. 5 Q.B. 395.

Each case must ultimately depend on the particular facts, but there are a number of reported cases on the point which act as a guide in showing the nature of the evidence which the court requires before it will make an order. There is, further, one class of case which stands out from the rest—i.e., where the company is in liquidation. Where a defendant applies for security for costs in any proceedings in which a company in liquidation is the plaintiff, an order will be made in his favour without any further inquiry, for the fact of liquidation is a sufficient "reason to believe" within the meaning of the section, and the burden is thereupon transferred to the plaintiff company to show any special circumstance which may displace this general rule. The rule is clearly illustrated by the case of *Northampton Coal Iron and Waggon Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500, where Jessel, M.R., after referring to s. 69 of the Companies Act, 1862 (which contained provisions identical with those to be found in s. 371 of the Act of 1929) said: "I should say that the fact of the plaintiff company being in liquidation would be sufficient 'reason to believe' the assets to be insufficient unless evidence to the contrary was given." It is always open to the company in liquidation to resist the defendant's application by bringing evidence to show that (e.g.) the liquidation is a voluntary one forming part of a scheme for amalgamation, and that its assets are ample to meet any calls that may be made on them by reason of the proceedings.

Another case to the same effect as that last cited is *Pure Spirit Co.* v. *Fowler*, 25 Q.B.D. 235. There, a shareholder sued a company in the Chancery Division to set aside a contract on the ground that it had been entered into as a result of fraud in a prospectus. At the same time the company sued the shareholder in the Queen's Bench Division for calls. The company was in liquidation, and the shareholder applied in the second action for security for costs. Denman, J., was of the opinion "that the fact that a company is in liquidation forms of itself a reason to believe that the assets of the company will be insufficient to pay the defendant's costs," and as there were no special circumstances to rebut this inference, an order that the company should give security for costs was made. The court always has a discretion, but it may in some cases find itself bound to exercise that discretion in a particular way. The cases where a company is in liquidation are the strongest, as is shown by *City of Moscow Gas Co.* v. *International Financial Society*, 7 Ch. 225, for it appears from that case that a company in liquidation may be ordered to give security even when it is a plaintiff in a cross-suit, in spite of the general rule that a plaintiff in a cross-suit (being really a defendant) is not covered by the opening words of s. 371 of the Companies Act, 1929. The point cannot, however, be treated as having been judicially determined, as it was held on appeal in the *City of Moscow Case, supra*, that the bill was not a mere cross bill. The Master of the Rolls had ordered security to be given, whether it was a purely cross bill or not, and James, L.J., in delivering the judgment of the Lords Justices dismissing the appeal, added: "I am disposed to agree with the Master of the Rolls that, whenever a bill is filed in the name of a company which is being wound up, security for costs must be given, whether the bill be a purely cross bill or not." These words of the lord justice, though in fact *obiter*, can be taken as a correct exposition of the law.

The last case to which I shall refer on this branch of the subject is *Strong* v. *Carlyle Press* (*No.* 2) [1893] W.N. 51. This was a debenture-holders' action against a company in liquidation, the winding up order having been made after the

commencement of the action. The company put in a defence to the effect that the debentures were invalid, and further it presented a counter-claim for certain declarations and inquiries, the details of which need not detain us. The plaintiffs in the action moved to strike out this counter-claim or, in the alternative, that security for costs might be ordered to be given. The motion to strike out was adjourned to the hearing, but it was held that security must be given for the costs of the counter-claim. Unfortunately the report in the "Weekly Notes" is a very short one, and it does not appear what authorities were cited. Nor does it appear whether a receiver had been put in by the debenture-holders, but it is submitted that in a case where a receiver has been put in, and whether or not the company is in liquidation, a defendant would have little difficulty in persuading the court to exercise the discretion given to it by s. 371 of the Companies Act, 1929. The cases concerning companies in liquidation, though they constitute a well-defined group, are nevertheless only illustrations of a much wider principle. It should be emphasised that there is no statutory rule requiring security for costs to be given by a company in liquidation. The statutory provision to which we have already referred requires security to be given where there is evidence to the effect that the company will be unable to pay the costs of a successful defendant. There is no restriction on the nature of the evidence which may be adduced and the fact that the company is in liquidation is only one of numerous lines of attack available for the defendant.

The amount of the security to be given is a matter for the discretion of the court. In this connection s. 371 of the Companies Act, 1929, must be read in conjunction with R.S.C., O. 65, r. 6. This latter provision is as follows:—

> "6. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the court or a judge shall direct."

The section of the Companies Act has already been set out above, and it will be remembered that it empowers a judge to order "sufficient" security to be given. The effect of this is that there is no limit on the amount of the security which may be ordered and the point has been judicially determined in *Imperial Bank of China, India and Japan* v. *Bank of Hindustan, China and Japan*, 1 Ch. 437. This was an action between the two banks, the plaintiffs being in voluntary liquidation. The defendants had obtained an order for security for costs to the amount of £100 in accordance with the then existing practice. Not content with this, however, they appealed from the order on the ground that the amount was insufficient. The appeal was successful, and the amount was fixed at £300. The factors which the court will take into consideration are conveniently summed up in *The Dominion Brewery Limited* v. *Foster*, 77 L.T. 507. Security for the amount of £350 had been ordered to be given by Kekewich, J. The defendants appealed, and claimed that security for the amount of £1,000 should be given. The Court of Appeal varied the order of Kekewich, J., by substituting the sum of £600 for £350. The sum of £1,000 which was contended for by the defendants was based on the assumption that the case would be fought out, but the court was of the opinion that it was bound to consider the possibility of the case collapsing. Lindley, M.R., said this: "The only principle which, as it appears to me, can be said to apply to a case of this kind is this, that you must have regard, in deciding upon the amount of the security to be ordered, to the probable costs which the defendant will be put to so far as this can be ascertained. It would be absurd of course to take the estimate of the managing clerk to the defendants' solicitors and give him just what is asked for. You must look as fairly as you can at the whole case . . . We must take into account the chance of the case collapsing without coming to trial . . ."

A Conveyancer's Diary.

[CONTRIBUTED.]

Election.

WHERE a testator purports to make a gift of someone else's property to a third party, the disposition is normally a nullity; for "*nemo dat quod non habet.*" But circumstances may arise in which equity will take account of such a gift, acting upon its doctrine of election. If, for example, the estate owner of Blackacre devises it to X, and also devises X's property, Whiteacre, to Y, the position really is that the testator gives Blackacre to X upon the implied condition that he gives Whiteacre to Y. Consequently, equity will not permit X to say: "Ah, take the cash in hand and waive the rest." That being so, equity says that X is put to his election. He must elect either to take under the instrument or against the instrument. If he takes under it, he may take the property devised to him, but must convey Whiteacre to Y. If, on the other hand, he elects to take against the instrument, he will forfeit so much of the property devised to him as will make good to Y the value of Whiteacre. If there is a surplus after making such compensation, X will receive it. The doctrine of equity is that, if X elects to take against the instrument, he does not forfeit the entire gift to him but only so much of it as will compensate Y.

Such is the equitable doctrine of election. I do not suppose that testators have often been known to make wills which deliberately call it into play; for it is, after all, a clumsy engine. Suppose that in the example we have taken Whiteacre is worth £1,000, then it would usually be much simpler to give Y a legacy of £1,000, and X something worth £1,000 less than Blackacre. The doctrine is one which really exists in order to effect substantial justice where the testator has made a gift of the sort described under a misapprehension of his rights. Even this case is not very common, of course, as people usually know whether a particular item of property is theirs or not, but such things can and do sometimes occur. Most of the cases in the books arose, I think, upon erroneous appointments made by persons having special powers of appointment. I have, however, recently seen a case which did not arise in this manner, which I think may be of some general interest, as showing how the doctrine works out in practice.

F was the father of S. About the beginning of the present century F bought Greenacre, but had it conveyed into the name of S. Since the parties were in the relation of father and son, and there was no evidence to rebut the equitable presumption of advancement, S became entitled to the equitable, as well as to the legal, fee simple in Greenacre. He took possession of the deeds and has received the rents and profits ever since. About 1916 F died, leaving a will whereby he devised Greenacre to S for life with remainders over, and gave him a number of benefits out of property which was without doubt F's own. Since Greenacre was well let S never thought of selling it or dealing with it in any way, but simply continued to draw the rent. He also took possession of the other properties given him by the will. Last year, for reasons entirely irrelevant to the present question, it became necessary to go into the affairs of F, and the circumstances in regard to Greenacre came to light. It transpired that Greenacre had been included in the Inland Revenue affidavit sworn by S, as executor of F, and also that no one had ever given a moment's thought to the problem of Greenacre. Indeed, S said that he had no idea in what capacity he held the deeds or in what capacity he drew the rent.

Now it is clear that S was put to his election upon F's death, since F had purported to devise something belonging to S, i.e., the equitable fee simple in remainder upon the life interest of S, to somebody else, while at the same time giving benefits to S. The questions were: Had S elected? If so, had he elected to take under or against the will of F?

Now, election may be either express or implied, and, whichever it is, the question whether an election has been made is one of pure fact. No conclusion can be drawn from the lapse of time since the case of election arose ("Halsbury," 2nd ed., Vol. 13, p. 158). On the facts of the present case it was obvious that no one had ever given a moment's thought to the problem of election; it was therefore very plain that S had made no express election. But had he impliedly elected by his conduct? He had drawn the rents just as a life tenant would, and he had himself (as the executor of F) sworn the Inland Revenue affidavit which included Greenacre as part of the property passing upon the death of F. But there were no further facts to support an implied election, and such as they were they could not possibly establish that an implied election had taken place. No implied election can occur unless the person put to his election knew that he was so put ("Halsbury," *ibid.*). It is true that it is a question of law (or rather equity) whether a case of election arises, but this is not an instance within the general rule that everyone is presumed to know the law; no one is presumed to know that he is put to his election: *Spread* v. *Morgan* (1865), 11 H.L.C. 588. In the present case there was absolutely no evidence that S had ever realised that he was put to his election even in the vaguest manner, still less that he was fairly and squarely confronted with the alternatives. Moreover, even if there had been such evidence, there was no evidence to support the suggestion that he had in fact elected, for he had done no unambiguous act consistent only with the fact that an election had been made. The swearing of the Inland Revenue affidavit was of no evidential value, as it was wrong in law in any case; on the facts stated Greenacre would not be part of the estate of F for estate duty purposes; nor was the drawing of the rents unambiguous; for whether S was a life tenant under the will, or continued to be an absolute owner by having elected against it, he would equally be drawing the rents.

The consequence was that it was impossible to say that S had ever elected and the matter was still open. The position having been put to him, S now elected in favour of the instrument, thereby reducing his equitable fee simple to a life estate, and the necessary steps were taken to give effect to the settlement in accordance with the Settled Land Act.

The Mortgagor in Possession: Leasing Powers.

The case of *Iron Trades Employers' Insurance Association Ltd.* v. *Union Land & House Investors Ltd.* [1937] Ch. 313, was commented upon by my learned friend the writer of the "Diary" of 8th May, 1937: 81 SOL. J. 370, from the point of view of its effect upon the draftsmanship of mortgages. I should like to add some notes upon it from another angle.

It will be remembered that the point of the case was that Farwell, J., held that sub-s. (13) of s. 99 of the L.P.A. enables the parties by the mortgage deed to engraft upon the statutory requirements for the exercise of the statutory power of leasing any extra requirements they please, and that those extra requirements thereby become statutory requirements, with the consequence that if they are not observed the lease is not made by virtue of the statutory power at all. In the case in question, and in thousands of other cases, the mortgage deed required that the mortgagor in possession should only exercise the statutory power of leasing with the prior written consent of the mortgagee. By virtue of sub-s. (13) a lease made by a mortgagor in possession without such consent would not be made under the statutory power, but would have such effect as the leases of a mortgagor in possession had prior to the Conveyancing Act, 1881: see *Tarn* v. *Turner*, 39 Ch. D. 456.

The effect of the judgment appears *primâ facie* to be that a statutory lease can only be created by complying with the statutory conditions, extended, if such be the case, under sub-s. (13).

Now, those statutory conditions are of three kinds: First, there are conditions precedent to the very formation of the grant: if the mortgagor is required to get the antecedent consent of the mortgagee, that is such a condition precedent. Then there are the conditions as to the terms and substance of the grant: for instance, sub-s. (3) only authorises certain sorts of lease, and sub-ss. (5), (6), (7), (9) and (10) require that certain special terms shall be included in the deed. Finally, there are requirements collateral to the grant: by sub-s. (8) the lessee must execute a counterpart and deliver it to the lessor, and by sub-s. (11) the counterpart, where the lease is granted by a mortgagor in possession, must be handed on to the mortgagee within a month of the making of the lease.

On the face of it the decision in *Iron Trades Employers' Insurance Association Ltd.* v. *Union Land & House Investors Ltd.* would suggest that a lease is not a statutory lease if it fails to comply with any one of the requirements falling within any one of the three classes, or any extension of them existing under sub-s. (13). It is respectfully submitted, however, that in the absence of express words in the judgment the decision cannot be interpreted quite so widely. Clearly, a failure to comply with any requirement in either of the first two classes would vitiate the lease, since the requirements of those classes go to the root of the matter. It might also be reasonably argued that the requirement that a counterpart be executed is to be similarly treated, since it is substantially a transaction concurrent with the making of the grant. But it is submitted that it would be wholly unreasonable to go so far as to say that the lease itself is vitiated by a mortgagor's failure to comply with the requirement of sub-s. (11) that he must hand on his counterpart to the mortgagee. The requirement only arises after the grant is made; it would be outrageous that the lessee should find later, as a result of the failure of the mortgagor to pass the counterpart on (a circumstance entirely outside the lessee's control), that his term had *ex post facto* become one that was not good against the mortgagee. It is suggested, therefore, that the decision of Farwell, J., cannot be read in this sense, and that accordingly the failure to comply with sub-s. (11), or with any similar collateral requirement existing by virtue of sub-s. (13) for the doing of any act by the mortgagor subsequent to the actual making of the grant, does not prevent a lease being a valid lease created under s. 99.

Landlord and Tenant Notebook.

Mesne Lessor's Duty to his Tenant.

Is a mesne lessor under any special duty to protect the interests of the undertenant from attacks to which it may be exposed by reason of the existence of a head lease? It is well established that the ordinary covenant for quiet enjoyment does not apply to the acts of a superior landlord. Forfeiture of the head lease involves either the sudden determination of the underlease or the burden and expense of a vesting order. An undertenant who finds that his term exceeds even the natural term of his lessor's interest has no remedy. Nevertheless, it has been suggested that the mesne lessor may be under certain obligations towards his tenant merely by virtue of the relationship.

An authority which has been mentioned in this connection is *Mellor* v. *Watkins* (1874), L.R. 9 Q.B. 400. The facts were that in 1851 a house was let from year to year. In 1854 the tenant sublet part of its cellars, also on a yearly tenancy. The sub-tenancy was assigned to the defendant in the action in 1861. Ten years later the mesne tenant surrendered his tenancy to the lessor, who thereupon let the house, again on a yearly tenancy, to another tenant. That tenant took possession of the house without disturbing the defendant, who, however, then ceased paying rent. The

following year the second-mentioned mesne tenant surrendered, and the lessor granted a fourteen-year lease of the house, including cellars, to the plaintiff. The defendant refused at first to give possession of the cellars, but left in 1873. Arbitration proceedings ensued (there was also some dispute about meters) and the question whether the plaintiff had been entitled to possession of the cellars in 1872 was one of the points of a case stated.

The position was thus that the defendants claimed under a sub-tenancy carved out of yearly tenancy some sixteen years ago, the tenancy having come to end one year ago, but it was held that the mesne tenant could not by a voluntary act put an end to the interest he had created.

The importance of this was appreciated a couple of years later in *Great Western Railway Co.* v. *Smith* (1876), 2 Ch. D. 235, C.A., when it was shown that it might affect the amount of compensation to be paid by a railway company under the Railways Clauses Act, 1845, for abstention, by persons interested, from working coal under their line. The coal in question had been leased to a tenant who died insolvent, and whose executors negotiated a surrender. It so happened that the actual issue was decided in the company's favour on the ground of a payment made before the lease had commenced, the Court of Appeal reversing the judgment of Hall, V.-C., on this point; this made it unnecessary to examine the effect of the surrender, but *obiter dicta* shows very clearly what the position might be. "He" (the reversioner) said James, L.J., "may have the fullest right to enforce a forfeiture; but if, instead of enforcing a forfeiture, he comes to an arrangement with the lessee that for some compensation he shall accept a surrender instead of proceeding to forfeiture, then that is in point of law a surrender and not a forfeiture." While Mellish, L.J., observed: "It is a rule of law that if there is a lessee, and he has created an under-lease . . . if the lease is forfeited, then the under-lessee loses his estate as well as the lessee himself; but if the lessee surrenders, he cannot, by his own voluntary act in surrendering, prejudice the estate of the under-lessee."

But these decisions show only that a mesne lessee has no special powers as such; they do not suggest, or, at all events, do not warrant the proposition that he is under some special duty. If the head lease, say, provides him with a power to determine, may he exercise it without consulting the interests of his tenant? This point has twice been before the courts fairly recently, namely in *Batty* v. *Vincent and City of London Real Property Co. Ltd.* (1921), 124 L.T. 594, and in *Re Knight and Hubbard's Underlease: Hubbard* v. *Highton* [1923] 1 Ch. 130. In the former the mesne tenant held a twenty-one year lease which he could determine at seven years by giving six months' notice; a year after its commencement he sub-let for thirteen years, with a proviso conferring upon himself power to determine at the end of the seventh year of his own term, the proviso being, however, qualified by another proviso to the effect that it was to be exercised only if he should be "desirous" of exercising his power to determine the head lease. What happened was that the second defendants obtained control of both the freehold reversion and the head term, vesting the latter in the first defendant as trustee; he then gave notice to the under-tenant, the plaintiff in the action, and the allegation on which the claim rested was that the new mesne tenant was not genuinely desirous of determining the head lease. It was shown that the second defendants had never received any rent from their "tenant," and argued that the true purpose of the proviso in the underlease was to enable the mesne tenant to terminate his liability by giving vacant possession. Be that as it may, the court refused to read the clause as so qualified. The facts of *Re Knight and Hubbard's Underlease* were to all intents and purposes similar, the main difference being that the plaintiff was sub-underlessee, so that three superior interests had to be acquired by or for the party—a friendly society—who wished to occupy the building containing his premises. Indeed, if there had not been other grounds for contesting the validity of the exercise of the power, the case could hardly have been argued in the High Court.

Of course, powers to determine can be qualified as in the above cases, i.e. by reference to desire to determine only, or they can be qualified by reference to desire to do something or to intention to do something. For the best example of a power which cannot be questioned, one must go outside the law of landlord and tenant; in the Privy Council case of *Sun Fire Office* v. *Hart* (1889), 14 A.C. 98, it appeared that a fire insurance policy entitled the insurers to determine the contract if the risk were increased "or for any cause whatsoever"; this was described as "very wide and comprehensive" so that only existence of the desire was necessary for its exercise. A good example of a limited power is to be found in *Southend-on-Sea Estates Co. Ltd.* v. *Commissioners of Inland Revenue* [1914] 1 K.B. 515, C.A., an income tax dispute arising out of the tax imposed on undeveloped land by the famous 1909 Budget. The question was whether agricultural land let for a term of seven years with a proviso entitling the lessors at any time and from time to time to enter and resume possession for building or other purposes was hit by the tax, which was expressly made applicable to land let subject to a lessor's power to determine. It was held that it was not. Swinfen Eady, L.J., put the matter very succinctly: "Bricks, mortar and timber are necessary and they must be paid for. A person may wish, heartily wish, to build and be very desirous of building, but he may not have the means of doing so, and he may have no intention whatever to build, although if he had the means he certainly would intend to build."

A mesne tenant may place himself under a negative obligation, however, by omitting to qualify the habendum of the underlease, as can be seen from a decision in which, unlike the two more recent cases mentioned, the under-tenant scored. In *Phipos* v. *G. & B. Callegari* (1910), 54 Sol. J. 635, a building had been let in 1896 on a twenty-one year lease giving the tenant the option to determine at seven or fourteen years. His successors underlet the upper floors in 1902 for a term of fourteen years, the underlease not containing any power to determine or any reference to the option conferred by the head lease. In 1908, the mesne tenants having issued debentures and a receiver having been appointed, the receiver wrote to the undertenant stating that he intended to determine the head lease and purporting to determine the sub-lease. The notice was held to be ineffectual for the purpose; apart from whether the receiver was qualified to give it, the sub-tenant was entitled to be protected in his term against any act of the lessee, whose exercise of his power was merely tantamount to a surrender.

Books Received.

Local Government Financial Statistics, England and Wales, 1934–35. Parts II and III. 1937. London: H.M. Stationery Office. Part II, 3s. 6d. net. Part III, 1s. 6d. net.

Wills' Principles of Circumstantial Evidence. Seventh Edition. 1937. By W. R. M. Gattie, C.B.E., M.A., of Lincoln's Inn, Barrister-at-Law, and M. Krishnamachariar, M.A., M.L., Ph.D. Demy 8vo. pp. xlvii and 530 (Index, 38). London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

The British Year Book of International Law, 1937. Eighteenth year of issue. Crown 4to. pp. vi and (with Index) 282. London: Humphrey Milford, Oxford University Press. 16s. net.

Criminal Statistics for England and Wales, 1935. July, 1937. London: H.M. Stationery Office. 3s. 6d. net.

Our County Court Letter.

LEASE OF RABBITING RIGHTS.

In a recent case at Maldon County Court (*Eaton* v. *Isaacson*), the claim was for £10 in respect of the rabbiting rights on Frame Farm, Tolleshunt D'Arcy, from the 27th October, 1936, to the 1st February, 1937. The plaintiff's case was that the defendant had agreed to pay £2 down and £10 on the first occasion he came to shoot. At the end of the first day the defendant expressed his satisfaction at the day's sport, but drove away without paying, and never returned. The plaintiff's land had since become infested with rabbits, and an apparatus had been brought for gassing them. The plaintiff's land had no snares, but there were some on a neighbour's land upon which the defendant and his friends went. The defendant's case was that, having answered an advertisement of "good rabbiting to let," he interviewed the plaintiff after dark, and relied on his word that the rabbiting was good. It transpired, however, that snares had been set, all along the hedgerows, and the defendant and two friends only shot six rabbits all day. As the shoot was not worth the money, the defendant did not go again. His Honour Judge Hildesley, K.C., gave judgment for the plaintiff, with costs.

THE REMUNERATION OF ESTATE AGENTS.

In *Hall Wateridge and Owen Ltd.* v. *Deakin*, at Shrewsbury County Court, the claim was for £12 as commission on the sale of a house. On October, 1933, the defendant instructed the plaintiffs to sell some property he had built, and in March, 1934, the plaintiffs had an inquiry from a Mr. Lea, who inspected some of the defendant's houses on the plaintiffs' list. These had no kitchen, and were unsuitable, but Mr. Lea did purchase a house with a kitchen from the defendant for £800. An account had been rendered quarterly, ever since, but the claim was not disputed until April, 1937. The defendant's case was that he had known Mr. Lea for five or six years, and, although he had inspected houses on the list of the plaintiffs, they had had nothing to do with the house he eventually bought. His Honour Judge Samuel, K.C., held that the plaintiffs were an effective instrument in bringing Mr. Lea and the defendant together. Had it not been for the plaintiff's introduction, Mr. Lea would not have inspected the defendant's property. Judgment was given for the plaintiffs with costs.

In *Widdowson* v. *Bradbury*, at Torquay County Court, the claim was for £23 7s. for commission or as damages for breach of contract, i.e., deprivation of the opportunity of earning commission. The plaintiff's case was that No. 33 Hoxton Road was to have been offered for sale by auction on the 28th April. A month beforehand, the plaintiff was given the sole selling agency, but the house was sold by the defendant for £550 on the 21st April. The first advertisement had been issued on the 10th April, and the withdrawal of the lot was only notified ten minutes before the auction was due to start. The defendant's case was that there was no right to commission, as the evidence of the purchaser was that he had heard of the house through a person at a sale, and not through the plaintiff's advertisements. There was also no right to damages, as the principal could always withdraw his property, and the agent was only employed to sell. Inasmuch as completion had not yet taken place when the action was begun, no cause of action had then arisen, and the claim was premature. His Honour Judge Wethered held, on the latter point, that an agent earned his commission as soon as the vendor and the ultimate purchaser were brought together. Nevertheless the appointment of a sole agent did not preclude an owner from himself selling the property. Judgment was therefore given for the defendant, with costs. See *Bentall, Horsley and Baldry* v. *Vicary* (1931), 74 Sol. J. 862.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

SETTLEMENT OF DEATH CLAIM.

In *Coppin* v. *Cottrell*, at Tewkesbury County Court, the applicant's case was that in February, 1937, her deceased husband had been trimming a hedge, in which there was some old and rusty barbed wire. In handling the wire, the deceased had sustained two small punctures in the skin between the thumb and finger of his right hand. An iodine dressing was applied, but the deceased subsequently collapsed and died from septicemia. A sum of £270 and £15 15s. costs had been agreed in settlement, and His Honour Judge Kennedy, K.C. made an award accordingly.

INSANITY AS AN ACCIDENT.

In *Smith* v. *Wm. Harrison, Ltd.*, at Walsall County Court, the applicant was a miner, and had met with an accident in the pit in 1934. The only result was a cut finger, but the wound became septic, and total incapacity resulted until May, 1935. The applicant returned to work, but mental trouble developed, and he was removed to a mental hospital. It was contended on his behalf that, if the applicant had not met with the accident, he would not now be insane. The respondents' case was that the insanity was due to brooding over the accident, which had unbalanced the applicant's mind, and his condition was not so directly due to the accident as to entitle him to compensation. His Honour Judge Tebbs held that there was some mental shock at the time of the accident, and the application was therefore within the Acts. An award was made of 19s. 2d. a week, and costs, with a stay of execution for twenty-one days.

ADEQUACY OF SETTLEMENT.

In *Hallworth* v. *Cellulose Acetate Silk Co. Ltd.*, at Lancaster County Court, an application was made for the approval of a settlement for £100. The applicant was aged 20, and was a spinner, but was prevented from following that occupation by reason of injuries to two fingers of his right hand. Compensation had been paid at £1 1s. 9d. a week, on pre-accident earnings assessed at £1 17s. 6d. a week for compensation purposes. Ultimately, the applicant would have earned £3 a week, but he was an orphan, and his mother (who had been twice widowed) had four other children and had been in bed herself for eight months with a heart complaint. The applicant had therefore negotiated a settlement without advice and against the wishes of his union. The respondents' case was that the applicant could do light work, but they were prepared to offer £150 in settlement. His Honour Judge Peel, K.C., held that the applicant was still entitled to compensation. Although he was trying to do his best for his family, the proposed settlement would not eventually benefit them. The application was therefore dismissed, the respondents not asking for costs.

LOSS OF LITTLE FINGER.

In *Evans* v. *Ridley*, at Newport County Court, the applicant's case was that, while employed as a stable helper at 35s. a week, his left hand was caught in a chaffing machine. Compensation was paid at £1 1s. 3d. a week for three months, after which his services were dispensed with, as he had lost his little finger and the tip of another. The applicant had obtained part employment with a farmer, but was unable to resume his former work, as he could not hold back the horses. His ambition to become a jockey had also been frustrated. The respondent's case was that the incapacity had ceased. His Honour Judge Thomas observed that, in a common law action for negligence, he might have concluded the matter by giving judgment for the applicant for £100. In spite of the loss of the little finger, the applicant was capable of earning the ordinary wages of a stable hand. Nevertheless, the payment of compensation from April to August was not long enough, and the period should have been extended from the 10th August to the 31st October. An award was made accordingly without a declaration of liability.

To-day and Yesterday.

LEGAL CALENDAR.

9 AUGUST.—On the 9th August, 1634, William Noye, Attorney-General, died of the stone at his house at New Brentford.

10 AUGUST.—Vice-Chancellor Shadwell, the last "Vice-Chancellor of England," died at his home at Barn Elms, in Surrey, on the 10th August, 1850. His colleague, Vice-Chancellor Knight Bruce, thus spoke of him on opening his court at the beginning of the following term: "We have lost at once a friend dear to us all and a judge distinguished for his great knowledge of the law that he administered—distinguished for various acquirements—distinguished for judicial patience, ever swift to hear and slow to decide, pure and blameless in life, an example of courtesy."

11 AUGUST.—On the 11th August, 1846, while still a student at the Middle Temple, John Duke Coleridge married Jane Fortescue at Farringford, in the Isle of Wight, and in his diary his father, Coleridge, J., on whom he was still almost entirely dependent, wrote: "My dear boy is married to a sweet, simple and sensible girl." Years afterwards, when his bride had passed away and he sat upon the Bench, the bridegroom recalled the scene:

"The past comes back; the small gray windworn church,
The gleaming inlets of the land-locked sea,
The sudden sunshine, all the wedding train."

12 AUGUST.—On the 12th August, 1898, the Criminal Evidence Act, permitting prisoners to give evidence in their own defence, became law. Commenting on this doubtful advantage, Lord Mersey once observed that "some cursed sprite had given them the privilege," adding, "God help them, for a more dreadful pitfall was never laid for a guilty wretch." Marshall Hall used to say that more than once an election to give evidence had led to the gallows.

13 AUGUST.—Vice-Chancellor Parker, though an ornament to the Bench, did not adorn it for long. Appointed in October, 1851, he survived less than ten months, dying unexpectedly at Rothley Temple, in Leicestershire, of angina pectoris, on the 13th August, 1852. He was then only forty-eight. He did not owe his promotion to political interest, for, though an active Tory, it was the Whigs who made him a judge.

14 AUGUST.—Charles Butler, who was born on the 14th August, 1750, was one of the most remarkable men who ever belonged to Lincoln's Inn. Having become a successful conveyancer in the days when no Roman Catholic could be a barrister, and that was the only form of practice open to them, he was the first of his co-religionists to be called to the Bar after the ban was lifted in 1791. A man of enormous industry, making an income of £5,000 a year, he was yet no mere lawyer, but a kindly, talented man with wide interests and charming manners. His enlightened and often prophetic views on the improvement of real property law earned him the title of "The Father of Modern Conveyancing." He died in 1832.

15 AUGUST.—In August, 1818, the Gloucester Assizes were held up by an extraordinary incident. The Commission was to be opened on the 12th, but the judges were delayed in Monmouth, and though Mr. Baron Garrow travelled as fast as horses could carry him, he arrived after midnight and, therefore, technically on the 13th. He provisionally opened the Commission before retiring for the night, but, after Mr. Justice Holroyd had joined him in the afternoon, it was decided that the power to open the Assizes on a day other than the one fixed was so doubtful that business should be suspended till the Lord Chancellor had been consulted. The under-sheriff was accordingly dispatched, and on the 15th August brought word that no judicial proceedings could be held.

THE WEEK'S PERSONALITY.

First of the popular party, then of the King's, William Noye, reviver of the forest laws, father of the soap monopoly and of the writ of ship money, became after he was made Attorney-General a well-hated man. "He was as famous a lawyer as ever this Kingdom bred . . . He was a man passing humorous, of cynical rusticity, a most indefatigable plodder, and searcher of ancient records whereby he became an eminent instrument of good and ill to the King's Prerogative. His apprehension (as 'tis said) was quick and clear, his judgment methodical and solid, his memory strong, his curiosity deep and searching, his temper patient and cautious, all tempered with an honest bluntishness far from Court insinuation." We are told that "his body being opened after his decease, his heart was found shrivelled like a leather penny purse, nor were his lungs right, which caused several conjectures by the Puritans." The Court party mourned him, but others rejoiced. "The Vintners drank carouses in hopes to dress meat again and sell tobacco, beer, etc., which . . . Noye restrained them from." The players dissected him in a farce, "A Projector Lately Dead," a "hundred proclamations being found in his head, a bundle of moth-eaten records in his mouth and a barrel of soap in his belly."

MORE LAW THAN LETTERS.

At the Birmingham Assizes recently, when Mr. Justice Swift made allusion to the story of the Mad Dog of Islington, counsel more learned in the law than in letters drew a bow at a venture, and replied that "The Vicar of Wakefield" was not among his authorities—a guess which caused the judge to observe that the Bar did not go after literary pursuits with the same assiduity as they used. He is not, however, the first judge to detect a literary lapse at the Bar. An amusing little story is told of Mr. Justice Denniston, a scholar and a man of letters, who adorned the New Zealand Bench. In a case before him, a fussy little counsel was opening his facts and outlining the evidence he meant to call. "I propose to call next a most important witness, Mr. Mahound," he said. "Not, I hope, the 'false Mahound,'" interposed the judge, with a playful recollection of Spenser. The fussy little counsel spluttered with indignation: "Most unmerited observation, your honour. I must protest. He is a most reliable and truthful witness, a highly respectable farmer." Denniston, J., did not explain.

TOO MUCH FLUENCY.

At the dinner of the Hardwicke Society recently, Mr. Justice du Parcq advised young barristers to pray to be saved from being too fluent, since short speeches had the most devastating effect on juries, while long speeches were lost on those who, unlike judges, had not learnt the habit of listening patiently. One of the neatest comments on fluency was inspired by a sustained outburst of eloquence of Lord Jeffrey, the Scots judge, while he was at the Bar. "Well," said a listener, "he has spoken the whole English language thrice over in two hours." In contrast to that style was the reply of the great Judah Benjamin in a heavy case in which his opponent on behalf of the defendant had delivered a lengthy speech. He replied in one effective sentence: "Gentlemen of the jury, give us our money and be quick about it." By tradition, Serjeant Prime is supposed to have been the foremost exponent of the soporific speech. Once, after he had sent a jury to sleep, his opponent opened with a reference to "the long speech of the learned serjeant." "I beg your pardon," interrupted the judge, "you might say 'the long soliloquy', for my brother Prime has been talking an hour to himself."

Mr. John Alexander Richards, solicitor, of Lincoln's Inn Fields, W.C., and Wimbledon, left £18,605, with net personalty £15,228.

Notes of Cases.

House of Lords.

Moss Empires, Ltd. *v.* Commissioners of Inland Revenue.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright, and Lord Maugham. 24th June, 1937.

REVENUE—INCOME TAX—ANNUAL SUMS PAID BY GUARANTORS TO ENSURE PAYMENT OF DIVIDEND BY COMPANY—WHETHER ANNUAL PAYMENTS FROM WHICH TAX DEDUCTIBLE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40)—GENERAL RULES APPLICABLE TO ALL SCHEDULES, r. 1.

Appeal from a decision of the First Division of the Court of Session (Lord Moncrieff dissenting).

By an agreement made in January, 1928, to which (*a*) the appellants and a certain company as guarantors, (*b*) two persons as trustees representing all the shareholders in a company called Dominion Theatre Limited, and (*c*) the latter company, were parties, it was agreed that, in order to ensure the payment of a return of 7½ per cent. on the ordinary shares of the Dominion Company for five years, the guarantors jointly and severally guaranteed and covenanted to and with the trustees, as trustees for and on behalf of the holders for the time being and from time to time of the 250,000 ordinary shares of the Dominion Company, that they would for each of the first five financial years of the Dominion Company, ending on the 30th January, 1933, pay the trustees any sum which might be necessary to bring the company's profits up to a sum sufficient to pay the 7½ per cent. dividend less tax. In each of the years in question the guarantors were called on to fulfil their obligations, and were permitted, in computing the amount of their profits and gains for tax purposes, to deduct the sum paid under the agreement as being a disbursement or expense wholly and exclusively expended for the purposes of their trade. The payments were not therefore "payable out of profits or gains brought into charge." For the five fiscal years 1928-29 to 1933-34, assessments were made in respect of the sums paid by the appellants under the agreement. The appellants appealed to the Special Commissioners, who affirmed the assessments and at the appellants' request stated the two following questions for the opinion of the court: (1) Whether the sums payable under the guarantee were annual payments from which income-tax was deductible; and, if so (2) whether the appellants were correctly assessed under r. 21 of the All Schedules General Rules, as amended by s. 26 of the Finance Act, 1927. The First Division of the Court of Session answered both queries in the affirmative. The appellants appealed..

LORD MACMILLAN said that it had been argued for the appellants that the payments were not annual payments, inasmuch as they were casual, independent, not necessarily recurrent, and throughout subject to a contingency. That argument commended itself to Lord Moncrieff, but he (Lord Macmillan) was unable to accept it. There was a continuing obligation extending over each and all of the five years to make a payment to the trustees for the shareholders in the event of the company's earning no profits or insufficient profits. The fact that the payments were contingent and variable in amount did not affect the character of the payments as annual payments. Rule 21 was not primarily a charging section but was part of the machinery of collection. The charging enactment was to be found in r. 1 of Case III, Sched. D, whereby tax was imposed on "any interest of money whether yearly or otherwise or any annuity or any other annual payment . . . payable . . . as a personal debt or obligation by virtue of any contract." He was of opinion that the payments in question fell within these words. The payments were indisputably income in the hands of the recipients. Being of opinion, as he was, that the payments in question were "annual payments charged with tax under Sched. D," and it being admitted that they were not "payable out of profits or gains brought into charge," he moved their lordships to affirm the interlocutor of the First Division of the Court of Session and dismiss the appeal.

COUNSEL: *A. M. Latter*, K.C., and *R. H. Sherwood Calver*, for the appellants; *J. S. Wardlaw Burnet*, K.C., *R. P. Hills*, and *T. B. Simpson*, for the respondents.

SOLICITORS: *Burton & Ramsden*, agents for *Allan, Dawson, Simpson & Hampton*, W.S., Edinburgh; *Solicitor of Inland Revenue*, London, agent for *Solicitor of Inland Revenue*, Edinburgh.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re Société des Usines Chimiques Rhone-Poulenc's Application.

Greene, M.R., Romer and MacKinnon, L.JJ.

15th July, 1937.

TRADE MARK—COMPOUND WORD—REGISTRATION BY CHEMICAL MANUFACTURERS—NAME OF FRENCH TOWN—CHEMICAL MANUFACTORY SITUATED THERE—FACTS UNKNOWN TO APPLICANTS—APPLICATION TO EXPUNGE MARK—TRADE MARKS ACT, 1905 (5 Edw. 7, c. 15), ss. 9, 11, 35—TRADE MARKS ACT, 1919 (9 & 10 Geo. 5, c. 79), s. 7.

Appeal from a decision of Crossman, J. (81 SOL. J. 58).

In 1932 an English company carrying on the business of manufacturing chemists obtained registration of the word "Livron" as a trade mark in respect of the class of "tonic medicines for human use," that name being a compound of the words "liver" and "iron" describing a preparation of extract of liver and iron. At the time they did not know that Livron was a town in the south of France of about 4,000 inhabitants, where there was one of the factories of a French firm manufacturing medicinal preparations. Some months later the mark was brought into use. In 1934 the French firm applied to expunge the mark. Crossman, J., held that it should be expunged under s. 35 of the Trade Marks Act, 1905.

GREENE, M.R., dismissing the English company's appeal, said that the fact that there was a town in France of that name where medicines were actually being made suggested with overwhelming force that the mark should not be registered. It had been argued that the tribunal before which an application under s. 35 came should not expunge a mark unless it was one which either could not have been registered having regard to the words of the Act or on the facts of the case ought not to have been registered. His lordship was prepared to accept the proposition for the purposes of this case. In considering whether the registration was justified under one of three relevant paragraphs of s. 9 of the Act as amended by s. 7 of the Trade Marks Act, 1919, the court must put itself back at the date of the application for registration on the footing that an application was then being made with the full facts before the Registrar. There arose the further point whether, assuming the case fell within one of the paragraphs, the Registrar should have exercised his discretion to refuse registration. First, this was not an "invented word" within para. (3) of s. 9. His lordship referred to *Eastman Photographic Materials Co.* v. *Comptroller General of Patents, Designs and Trade Marks* [1898] A.C. 571, and *Philippart* v. *William Whiteley Ltd.* [1908] 2 Ch. 274, and said that a foreign place name had an existence for Englishmen as well as foreigners, because if an Englishman wished to refer to the place it was the only name he could use. It could not be an invented word. Next, approaching para. (4) on the basis that this was not an invented word, it could not be said that it was not "according to its ordinary signification a geographical name." There could not be brought into consideration any meaning it might have acquired in connection with this product, since the

matter had to be regarded as at the time when the application for registration was made. At that time, in the mouth of an Englishman, it meant only the place unless he was talking gibberish. His lordship referred to *In re Magnolia Metal Co.'s Trade Marks* [1897] 2 Ch. 371. It had been argued that it was possible to have a name which though geographical had no "ordinary signification" and so was not within the paragraph, but that could not be accepted. When a word was found not to be an invented word because it was a geographical name it could not be said that it had no ordinary signification, because whenever it was used with the intention to convey any meaning it was used to convey a geographical meaning and no other. Finally, it was said that this was a "distinctive mark" within para. (5). That paragraph only came to be considered on the hypothesis that "Livron" was a word or name and accordingly there was not to be registration save on evidence of distinctiveness. If the Registrar had had all the matter before him which was now before the court he would have been wrong in granting registration because the mark being the name of a place where medicines were manufactured and the business of medicines being international this mark could not be held to be "distinctive." His lordship added that in making the assumption in the appellants' favour that the mark could have been registered without the production of evidence that it had in use become distinctive he was not deciding that that proposition was established. On another aspect of the case, even if this mark had come within one of the paragraphs, yet on the particular facts if the Registrar had registered it he would have been exercising his discretion in a way which the Court of Appeal would have overruled. Further, this mark would be "calculated to deceive" within s. 11 of the Act. To displace that proposition it was insufficient to say that in practice it had not deceived. In the past its use had been limited to a particular way and a particular context, but since under the registration it could be used as a registration mark for anything falling within the class of "tonic medicines for human use" the question was whether its use in any way in which it could be used would be calculated to deceive. Having regard to the existence in a place of the same name of a company manufacturing articles of the same class it was calculated to deceive. Moreover, a variation under which the words "trade mark" and "brand" were added would not on the facts be sufficient to prevent the possibility of confusion or to get rid of the objections to this mark.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *Swan*, K.C., and *Bliss*; *Burrell*, K.C., and *K. R. Johnston*; *Andrewes Uthwatt* (*J. S. Bennett* with him).

SOLICITORS: *Seaton Taylor & Co.*; *G. B. & L. Ellis*; *Solicitor to Board of Trade.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Josselson *v.* Borst (Gliksten third party).

Greer, Slesser and Scott, L.JJ. 15th July, 1937.

ASSIGNMENT—COVENANT OF INDEMNITY—ASSIGNMENT OF LEASE—INDEMNITY IN RESPECT OF RENT AND OBSERVANCE OF COVENANTS—TWO COVENANTORS—WHETHER JOINT OR SEVERAL COVENANT—BANKRUPTCY OF ONE COVENANTOR—NOTICE OF ASSIGNMENT OF BENEFIT OF COVENANT—WHETHER TO BE GIVEN TO BOTH COVENANTORS—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 118—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), ss. 81, 136.

Appeal from a decision of SINGLETON, J.

In 1923 the plaintiff granted a lease of certain premises to T. Borst, the defendant, and to one B. Borst, who were trading in partnership. In 1927, when the partnership was dissolved, the lease was assigned to a company, which subsequently went into liquidation. In 1931 the liquidators agreed to sell the lease to one Gliksten, the third party in these proceedings, but by his authorisation it was in fact assigned to one R. Borst, the parties to the assignment being the company, the liquidators, Gliksten and R. Borst. The two last-named covenanted "with the company and with the liquidators" to indemnify them in respect of payment of rent and observance of covenants. In 1936 "the company acting by the liquidators" assigned to the defendant (one of the original tenants) the benefit of this covenant of indemnity. By cl. 5 of this contract of assignment the defendant released the company and the liquidators and each of them from all claims in respect of the covenants on the part of the company contained or implied in the assignments of the lease, save in so far as it was necessary to enable him to enforce the indemnity now assigned to him. By cl. 6 he covenanted with the company and the liquidators and severally with each of them to indemnify them against all liability in respect of present or future claims against them by himself or by B. Borst (the other of the original tenants) on any of the covenants by them with him or with B. Borst contained or implied in the assignments of the lease. At this time both B. Borst and R. Borst (the assignee of the lease under the assignment of 1931 and one of the covenantors under the covenant of indemnity now assigned) were undischarged bankrupts. Notice of this assignment was not given to R. Borst, but it was given to Gliksten, the other covenantor and the third party in these proceedings. In an action by the plaintiff against the defendant in respect of rent due under the lease and unpaid, the defendant, relying on the assignment to him of the covenant of indemnity, brought in the third party by third party proceedings and SINGLETON, J., held that he had a right of indemnity against him. The third party appealed.

GREER, L.J., dismissing the appeal, first referred to the Law of Property Act, 1925, s. 81, and said that by virtue thereof the covenant of indemnity of 1931 "with the company and with the liquidators" must be construed as being a joint and several covenant made with each of them. Next, with regard to the assignment of 1936 by the company, his lordship referred to the Law of Property Act, 1925, s. 136, and said that it had been contended that notice thereunder should have been given to the two covenantors, to B. Borst as well as to Gliksten, the third party. But under the Bankruptcy Act, 1914, s. 118, the one of the covenantors who had not become bankrupt could be sued without the joinder of the other who had become bankrupt and, therefore, this argument could not prevail. His lordship further considered that the effect of cl. 5 and cl. 6 in the assignment of the indemnity of 1936 was not to nullify it and also that the claim was in respect of a debt which the third party had undertaken to pay and was not concerned with damages.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *Burrows*, K.C., and *Sir George Jones*; *Spens*, K.C., and *E. Hancock.*

SOLICITORS: *Bishop & Fenton-Jones*; *W. R. J. Hickman & Randall.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Hagen *v.* National Provincial Bank Ltd.

Greer, Slesser and Scott, L.JJ. 19th July, 1937.

PRACTICE—CITY OF LONDON SPECIAL JURY—WHETHER APPLICATION TO JUDGE IN CHARGE OF COMMERCIAL LIST NECESSARY—POWERS OF MASTER AND JUDGE IN CHAMBERS.

Appeal from a decision of Porter, J.

In an action for alleged slander the defendants by their defence denied publication of the words alleged and their innuendo, and did not admit that the plaintiff had suffered damage. On a summons for directions under R.S.C., Ord. XXX, the Master ordered trial in Middlesex with a judge and special jury. The defendants then applied to Porter, J., being the judge in charge of the Commercial List, asking for transfer of the action to that list for trial with a City of

London special jury. Porter, J., refused to make any order save that the costs of the application should be the plaintiff's in any event. The defendants appealed.

GREER, L.J., in giving judgment, said that there was nothing in the Judicature Act or the Rules made thereunder which prohibited the Master or the Judge in Chambers on appeal from him from making an order that the venue should be in London, and that the action should be tried by a City of London special jury. The Master probably thought he should follow the practice laid down in *Barnes* v. *Lawson*, 16 Com. Cas. 74, to the effect that where notice was given for a City of London special jury there should be formal application for transfer to the Commercial List, after which interlocutory applications should be made to the judge in charge of the list. Nothing justified the decision in that case. In the circumstances the time for the defendants to appeal to the Judge in Chambers from the Master's order should be extended for seven days with an intimation that the court considered that notwithstanding *Barnes* v. *Lawson*, *supra*, the judge had power to order the venue to be in London and trial to be by a City of London special jury.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *Morle; Wallington*, K.C., and *C. Salmon*.

SOLICITORS: *Wilde, Sapte & Co.; Woolfe & Woolfe*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Hulls *v.* Farr.

Bennett, J. 13th July, 1937.

CONTRACT—BOXING CONTEST—TERMS—CLAIM TO RESTRAIN BOXER FROM BOXING PUBLICLY BEFORE CONTEST—WHETHER AGREED.

The plaintiff was a promoter of boxing contests and the defendant a boxer of repute. Both were members of the British Boxing Board of Control. By a written contract dated the 22nd June, 1937, the defendant agreed with the plaintiff, in consideration of a payment of £7,500, to engage in a boxing contest with one Schmeling, also a boxer of repute, on a date in September to be fixed. The date regarded as convenient was the 30th September. By regulation 18 (2) of the rules of the board of control: "When a contract has been arranged between a promoter and a boxer or a boxer's manager on his behalf, the terms of such contract shall be incorporated into the British Boxing Board of Control's printed form No. 35 by filling up the blanks and striking out the inapplicable alternatives therein provided, and by making any other additions, excisions, and variations, if in any given case the circumstances so require, provided always no regulations are broken by such alterations." By cl. 6 of form No. 35: "The boxer shall not box publicly days before the date of the contest without the consent in writing of the promoter." In the space for the number of days, dots and dashes had been inserted. In this action the plaintiff sought to restrain the defendant from publicly boxing against one Louis, also a boxer of repute, in America on the 26th August. The evidence on behalf of the plaintiff was that there should be an interval of six or eight weeks between two important fights in order that the boxer might be in proper condition. There was evidence on behalf of the defendant that seven to twenty-one days were sufficient. He also said that when the contract was entered into there was no suggestion that it should contain any prohibition against his boxing Louis before the date of the contest agreed upon.

BENNETT, J., dismissing a motion to restrain him from so boxing, said that the case depended on whether the defendant was bound to incorporate the terms of cl. 6 in his contract. In a contract by which the defendant had to sign form No. 35 he was free to delete it altogether. The defendant had not bound himself not to fight anyone before the 30th September.

COUNSEL: *Cohen*, K.C., *Engelbach* and *A. Berkeley; Grant*, K.C., and *Mulligan*.

SOLICITORS: *Beaumont, Son & Rigden; Vivian J. Williams & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Zetland *v.* Driver.

Bennett, J. 18th, 19th, 22nd and 23rd March, 30th June, 1st and 29th July, 1937.

COVENANT—SALE OF LAND—RESTRICTIVE COVENANTS—NOTHING TO BE DONE DETRIMENTAL TO NEIGHBOURHOOD—LAND INTENDED TO BE BENEFITED—PART UNSOLD OR SOLD WITH EXPRESS BENEFIT OF COVENANT—ENFORCEABILITY BY SUCCESSOR IN TITLE.

In 1928, the first Marquis of Zetland, being tenant for life of certain settled estates, conveyed to one Goodswen a piece of freehold land at Redcar (now No. 200, Lord Street). It was provided that the expression "vendor" in the conveyance included where the context admitted his successors in title, and the purchaser covenanted that no act should be done on the land conveyed to him "which in the opinion of the vendor may be a public or private nuisance or prejudicial or detrimental to the vendor and the owners or occupiers of any adjoining property or to the neighbourhood." This and other restrictive covenants were expressed to be "to benefit and protect such part or parts of the lands in . . . Redcar . . . now subject to the settlement (*a*) as shall for the time being remain unsold or (*b*) as shall be sold by the vendor or his successors in title with the express benefit of this covenant." Some of the lands intended to be benefited were adjacent to 200, Lord Street, others over a mile away. In 1929 the vendor died and the plaintiff succeeded to the title and became entitled in possession as tenant in tail male to the hereditaments comprised in the settled estates. In 1935, Goodswen conveyed No. 200, Lord Street, to the defendant, who carried on an eating-house business there, and, in 1936, began to sell fried fish for consumption off the premises. The plaintiff being of the opinion that this was detrimental to the amenities of the locality, and to his own property, now sought to restrain him from so doing. No evidence was called that the business constituted a nuisance.

BENNETT, J., in giving judgment, said that the defendant purchased with notice of the restrictive covenants. The question was whether the plaintiff not being the original covenantee could enforce them. He was not a person who could enforce them irrespective of any question whether their benefit was annexed to the land (*White v. Bijou Mansions Ltd.*, 53 T.L.R. 818; 81 SOL. J. 498). But if this covenant ran with the land he could enforce it, since though it had never been judicially considered whether a covenant could be made to run with land till it changed ownership on sale, there could be no objection to parties agreeing that the benefit of a restrictive covenant should run with the covenantee's land till the happening of some specified event, and that, thereafter, the benefit should pass only if expressly assigned. But if a covenant touched only part of the land to which it had been attempted to annex it, the attempted annexation failed (*In re Ballard's Conveyance* [1937] 1 Ch. 473; 81 SOL. J. 458). Here the greater part of the land could not be affected by anything done at 200, Lord Street, and therefore the attempted annexation failed and the action must be dismissed with costs.

COUNSEL: *Morton*, K.C., and *J. N. Gray; Evershed*, K.C., and *B. Tatham*.

SOLICITORS: *Frere, Cholmeley & Co.; Griffith & Son*, for *Miles, Hutchinson & Lithgow*, of Middlesbrough.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Mr. Henry Samuel Oppenheim, J.P., solicitor, of St. Helens, Lancs, left £13,481, with net personalty £3,496.

Massine *v.* De Basil and Others.

Luxmoore, J. 30th July, 1937.

COPYRIGHT—BALLETS—ENGAGEMENT AS CHOREOGRAPHER "COLLABORATEUR ARTISTIQUE," "MAÎTRE DE BALLET" AND DANCER—WHETHER CONTRACT OF SERVICE—COPYRIGHT IN NOTATION OF DANCING—COPYRIGHT ACT, 1911 (1 & 2 Geo. 5, c. 43), s. 5.

In January, 1932, the plaintiff first became associated with the defendant, who had recently formed his Russian Ballets, and became chief dancer in the ballets produced by him as well as maître de ballet and choreographer. Till November, 1932, there was no formal agreement, but, under a contract then entered into, the plaintiff agreed to render services for a fixed period as maître de ballet, chief dancer and choreographer, in which last capacity he was to produce the new ballets necessary for the season, arrange dances and hold himself at the director's disposal. This arrangement continued till the 10th August, 1934, when a new agreement was made whereby the plaintiff agreed to give his services to the director "(A) as a choreographer, (B) as a 'collaborateur artistique' and maître de ballet, and (C) as a dancer." It was agreed that the plaintiff should "compose and arrange such dances and ballets as may be suitable to and may be required by the director for the purposes of the Ballets Russes throughout the period of this engagement and will be responsible for the entire choreography of such ballets and dances." The plaintiff also undertook during his engagement to "give his full and exclusive services to the director as provided herein and that he will not, without the consent in writing of the director, in any manner be concerned in the production of ballets, stage plays or cinematograph films or any form of public entertainment of any kind otherwise than as herein provided." He also agreed to appear at every performance of the Ballets Russes if required by the director and to attend and superintend as maître de ballets all rehearsals. He was to be paid a monthly salary, and provision was made for payments during illness and for a vacation of six weeks. The agreement also dealt with the rights in certain ballets devised by the plaintiff before January, 1932, but not yet presented. Sums were to be payable by the defendant on presentation whereby he was to acquire the right of performing them for three years from the date of the first performance or till the plaintiff ceased to be employed by him. Thereafter, he was to have an option to buy the plaintiff's rights. (The time so limited being about to expire, he had now given notice of his intention to exercise his option.) Thereafter the plaintiff performed the terms of the contract. In this action he sought an injunction to restrain the defendant from claiming to be the owner of the copyright in the Russian Ballets.

LUXMOORE, J., in giving judgment, said that a ballet was composed of several elements—music, story or libretto, choreography or notation of the dancing, scenery and costumes. His lordship, dealing with the case of eight ballets devised by the plaintiff before January, 1932, said that the defendant could only claim the copyright in so far as he had acquired it from the plaintiff. As to four which had been presented before the 1934 agreement, his lordship considered the facts relating to them and held that the defendant had no right or option in respect of them. As to four which had been presented since the agreement, they fell within its provisions, and the copyright was vested in the plaintiff subject to the defendant's rights thereunder. Dealing with the ballets subsequently devised, his lordship said that the defendant claimed to be entitled to the copyright in the plaintiff's work on the ground that he was employed under an agreement of service within the Copyright Act, 1911, s. 5. He contended that there was implied in the agreement a term that he was to be entitled to have the copyright assigned to him. In considering whether the agreements under which the plaintiff worked were contracts of service, one had to consider the services to be rendered, the relationship between the parties, whether one party had the right to request the other to obey reasonable orders for carrying out the contract and whether refusal would constitute a breach of the contract. Apart from the fact that he was to act as choreographer the only ways in which the plaintiff was to serve the defendants were as dancer, master of the ballet and collaborator. The fact of his acting as choreographer had not much effect on the agreement and would not alter the position with regard to it. This was a service agreement within the section. There was an implied term that the defendant should be entitled to such rights as might arise from any work done by the plaintiff for him. His lordship assumed that the work done by a choreographer in devising the notation of the dancing was a matter of copyright which might be infringed, although he had some doubt on this point. But the subject-matter of the copyright claimed was in the ballet as a whole. The defendant had obtained the right to use particular music, scenery and dresses—the other elements of a ballet. He had engaged the plaintiff to supply the choreography, which could not have been performed by itself without the music and the scenery. It was part of a composite work and the case was covered by *Sweet* v. *Benning*, 16 C.B. 459. The defendant had paid for the supply of this necessary ingredient in his ballets. It would be strange if he were prevented from using it at the termination of the agreement. In that case neither the plaintiff nor the defendant would be able to perform the ballet. Unless he were entitled to the copyright in that part of the ballet, the defendant would not be getting that benefit from the contract which must have been the intention of the parties. The copyright in the post-1932 ballets was vested in him.

COUNSEL: *Hon. Stephen Collins*, K.C., *Radcliffe*, K.C., and *J. Sparrow*; *Sir Patrick Hastings*, K.C., *Shelley*, K.C., and *Aldous*.

SOLICITORS: *J. D. Langton & Passmore*; *Kenneth Brown, Baker, Baker*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Pitcher *v.* Martin and Another.

Atkinson, J. 29th June, 1937.

NUISANCE—NEGLIGENCE—PLAINTIFF INJURED BY DOG RUNNING WITH LOOSE LEAD—LIABILITY OF OWNER OF DOG.

Action tried by Atkinson, J.

The plaintiff was walking in a public street when the defendants' dog ran past her while chasing a cat. The dog's lead was dangling as it ran, and became entwined round the plaintiff's leg, throwing her to the ground and injuring her. The defendants denied negligence, or that the dog caused the plaintiff's fall. It was contended for the plaintiff that, if anybody placed on or near a highway anything which was calculated to cause danger or inconvenience to users of the highway and damage resulted, it was an actionable nuisance, independently and irrespective of any negligence on the part of the owner (*Jeffery* v. *St. Pancras Vestry* [1894] 63 L.J. Q.B. 618; *Brown and Wife* v. *Eastern and Midlands Railway Company* (1889), 22 Q.B.D., 391; *Jones* v. *Owen* (1871), 24 L.T. (N.S.), 587; and *Gayler & Pope, Ltd.* v. *B. Davies and Son, Ltd.* [1924] 2 K.B. 75); and that a dog with a lead at large on the highway was a nuisance, unless it could be justified or explained that a dog rushing with a lead down the highway was *primâ facie* evidence of negligence, but that nuisance eliminated the necessity of proving negligence. It was contended for the defendants that there had never been a case where an animal on the road was held to be a nuisance, although it might be otherwise if a dog were dangerous

(*Rylands* v. *Fletcher*, L.R. 3 H.L. 330; and *Wing* v. *London General Omnibus Company* [1909] 2 K.B. 652).

ATKINSON, J., said that the two propositions advanced for the plaintiff were sound. *Primâ facie*, there would here be a case of liability. A dog with a loose lead in the streets of London was a cause of danger to users of the highway. A dog with a loose lead being free in the streets was something which called for explanation by the person in control to rebut the allegation of negligence. The second defendant's evidence showed that she was negligent. Her duty was to hold the dog sufficiently firmly to guard against those contingencies which might reasonably be anticipated. Such a contingency was that the dog should make a sudden dart after another dog or a cat. There was no case against the first defendant, and there must be judgment for the plaintiff against the second defendant.

COUNSEL: *R. A. Willes*, for the plaintiff; *D. Murphy*, for the defendants.

SOLICITORS: *Warren & Warren*; *Le Brasseur & Oakley*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Acquisition of Land by Public Authorities—Costs.

Sir,—Contracts for the acquisition of land by public authorities usually provide that the costs of the landowners' solicitors shall be as allowed by the Lands Clauses Consolidation Act, 1845. We are informed that in a recent case (the words used being as quoted) a taxing master ruled that where the only title to be investigated or deduced is purely a registered title the costs are confined to the land registry scale fee. This ruling is being acted upon. It could, therefore, appear fair that in cases of this kind the scale should be excluded where it would involve inadequate remuneration for the work and responsibility involved.

A. LLOYD-JONES & SONS.

Ealing, W.5.
26th July.

Removal of Electricity Installation.

Sir,—I have had called to my attention the answer to *Q.* 3443 in your issue of the 12th June.

It is indisputable that an owner or occupier of premises can demand from the electricity undertakers in certain circumstances a supply of electricity. This is the right granted to the owner or occupier by s. 27 of the schedule to the Electric Lighting (Clauses) Act, 1899, and is, of course, subject to the provisions of the section. The right is of no use to the landlord or incoming tenant mentioned in your answer as he has no installation with which to take the current. The installation in the premises being the absolute property of the undertakers under s. 16 of the Electric Lighting Act, 1909, cannot be used without their permission. It is, of course, open to the landlord or incoming tenant to re-wire the premises, but generally speaking it would be simpler and cheaper to purchase the installation from the undertakers.

In these circumstances I venture to suggest the concluding sentences of the answer are misleading.

I. R. G. JONES.

New Broad Street, E.C.2.
29th July.

[This letter has been shown to the contributor who answered the "Point in Practice" referred to, and his reply is as follows:—"The Electric Lighting Act, 1909, s. 16, merely provides that the installation shall remain the property of the undertakers until all the instalments are paid. The section is, therefore, designed to give the undertakers a remedy against a defaulting hirer. The section does not derogate from a fresh owner or occupier's right to demand a supply under s. 27 of the schedule to the Electric Lighting Act, 1909. The latter right is paramount, and no section of any Act gives the undertakers a right to impose a condition that an owner or occupier, who is not in default, shall pay up any arrears owing by a predecessor in title. Read by itself, s. 16, *supra*, may be strained in its interpretation so as to confer such a right, but such an interpretation is regarded as fallacious."—ED., *Sol. J.*].

Obituary.

MR. R. K. CHAPPELL, K.C.

Mr. Robert Kingsley Chappell, K.C., Judge of Appeal, Isle of Man, of King's Bench Walk, Temple, died at Ramsey on Wednesday, 11th August, at the age of fifty-two. Mr. Chappell was educated at Leeds Grammar School, Merchant Taylors, Crosby, and Liverpool University. He passed The Law Society's final examination in 1906, but in 1909 he was called to the Bar by the Inner Temple. He joined the Northern Circuit, and took silk in 1929. He became Acting Deemster of the Isle of Man in 1934, and was appointed Judge of Appeal the same year.

DR. E. SMITH.

Dr. Edwin Smith, Coroner for West London, died on Saturday, 7th August, at the age of sixty-six. He received his medical training at St. Thomas's Hospital, London, and in 1894 he graduated M.B. at London University. He became M.D. the following year. He was called to the Bar by the Middle Temple in 1908.

MR. H. C. WALLACE.

Mr. Harry Charles Wallace, Barrister-at-Law, of Plowden Buildings, Temple, died at Buxted, Sussex, on Sunday, 8th August. Mr. Wallace was called to the Bar by the Middle Temple in 1903.

MR. C. HUMPHRIES.

Mr. Charles Humphries, LL.B., solicitor, of Basinghall Street, E.C., died in London, on Sunday, 8th August. Mr. Humphries was admitted a solicitor in 1888.

MR. J. B. ROBERTS.

Mr. Joseph Batchelour Roberts, solicitor, of Basinghall Street, E.C., and Forest Hill, S.E., died at Forest Hill on Wednesday, 4th August, at the age of seventy-three. Mr. Roberts was admitted a solicitor in 1887.

MR. S. TAYLOR.

Mr. Sydney Taylor, solicitor, of Buxton, died at his home, at Buxton, on Sunday, 1st August, at the age of seventy-three. Mr. Taylor, who was admitted a solicitor in 1886, had been Coroner for the High Peak District for nearly forty years. He was the first chairman of the Buxton and District Hospital.

GOVERNMENT LIFE ANNUITIES—IMPROVED FACILITIES.

The National Debt Office, 19, Old Jewry, E.C.2, announces that under s. 33 of the Finance Act, 1937, the commission of 2s. 6d. per cent. heretofore charged where an annuity is purchased for cash is abolished, and the period allowed for completion of purchase is increased to a maximum of fifteen days. Full particulars of the arrangements for the grant of single and joint life annuities without limit of amount, for cash or in exchange for Government stocks, may be obtained from the Department.

Legal Notes and News.

Honours and Appointments.

It is announced from the Dominions Office that Sir WALTER HUGGARD has been selected for appointment to the combined post of President of the Special Courts in Swaziland and the Bechuanaland Protectorate, Judicial Commissioner in Basutoland, and Legal Adviser to the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service :—

Mr. G. D. L. CARNEGIE appointed Crown Counsel, Tanganyika.

Mr. W. H. E. DUPRÉ appointed President, District Court, Cyprus.

Mr. C. N. S. POLLARD appointed Crown Counsel, Nigeria.

Mr. L. R. ANDREWES (Deputy Registrar of the Supreme Court) appointed Official Receiver and Registrar of Trade Marks and Patents, Hong Kong.

Mr. I. R. GREENE (Crown Counsel, Tanganyika) appointed Magistrate, Zanzibar.

Mr. R. A. HAIG (Magistrate, Zanzibar) appointed Legal Secretary, Somaliland.

Mr. G. W. M. HENDERSON (Stipendiary and Circuit Magistrate, Bahamas) appointed Crown Counsel, Tanganyika.

Mr. R. C. REDMAN (Assistant Administrator General) appointed Senior Assistant Administrator General, Tanganyika.

The Reference Committee for England and Wales, consisting of the Lord Chief Justice, the Master of the Rolls, and the President of the Chartered Surveyors' Institution, have appointed Sir CHARLES GOTT and Mr. ARTHUR LLOYD THOMAS to the panel of official arbitrators constituted under the Acquisition of Land (Assessment of Compensation) Act, 1919. The appointments will take effect as from 1st September and 20th September respectively.

Mr. STEPHEN HOWE, solicitor, of Sheffield, has been appointed senior assistant solicitor to the Norwich Corporation. Mr. Howe was admitted a solicitor in 1931.

Professional Announcements.

(2s. per line.)

Messrs. GREGORY, ROWCLIFFE & CO., solicitors, of 1 Bedford Row, W.C.1, announce that they have as from the 1st August, 1937, taken into partnership Mr. JOHN CHARLES HOLLAND BESWICK, M.A., Cantab.

Wills and Bequests.

Mr. Francis Edward Foster Barham, solicitor, of Hampstead, for nearly fifty years a partner in Messrs. Sharpe, Pritchard & Co., solicitors, left £24,331, with net personalty £24,174.

Mr. William John Petheridge, retired solicitor, of Exmouth, left £14,313, with net personalty £14,224.

Mr. Hugh Vaughan Vaughan, solicitor, of Builth Wells, Brecon, late Clerk of the Peace of Radnorshire, left unsettled estate of the gross value of £52,977, with net personalty £32,282. He left £100 to St. Mary's Church, Builth, the income to be applied for supplying fuel to poor people of the parish.

NATIONAL FITNESS—THE FIRST STEPS.

The National Fitness Council and the Grants Committee have issued a booklet called "National Fitness—The First Steps," containing a statement of the way in which the Council and the Committee will help local authorities and voluntary organisations to make a fitter nation (H.M. Stationery Office, price 2d.). While the booklet is primarily intended for the use of local authorities and voluntary organisations, the Council hope that it will prove of interest to the public as well, for, as the Foreword points out, it is on the active interest and co-operation of the general public that progress will depend.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 26th August, 1937.

	Div. Months.	Middle Price 11 Aug. 1937.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108	3 14 1	3 8 5
Consols 2½%	JAJO	74⅛	3 7 1	—
War Loan 3½% 1952 or after	JD	100¼	3 9 10	3 9 7
Funding 4% Loan 1960-90	MN	111	3 12 1	3 6 2
Funding 3% Loan 1959-69	AO	94⅜	3 3 4	3 5 5
Funding 2¾% Loan 1952-57	JD	92½	2 19 6	3 5 4
Funding 2½% Loan 1956-61	AO	87	2 17 6	3 5 10
Victory 4% Loan Av. life 22 years	MS	109½	3 13 1	3 7 8
Conversion 5% Loan 1944-64	MN	113	4 8 6	2 12 6
Conversion 4½% Loan 1940-44	JJ	106⅛	4 4 8	2 6 5
Conversion 3½% Loan 1961 or after	AO	100⅜	3 9 6	3 9 1
Conversion 3% Loan 1948-53	MS	98¼	3 1 1	3 2 8
Conversion 2½% Loan 1944-49	AO	95½	2 12 4	2 19 0
Local Loans 3% Stock 1912 or after	JAJO	85½	3 10 2	—
Bank Stock	AO	341½	3 10 3	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	77	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	112	4 0 4	3 6 10
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	110	4 1 10	3 17 11
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	108	3 14 1	3 4 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 5 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	86	2 18 2	3 11 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 10
Australia (Commonw'th) 3% 1955-58	AO	89	3 7 5	3 15 4
Canada 4% 1953-58	MS	107	3 14 9	3 8 6
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50	JJ	97	3 12 2	3 16 0
New Zealand 3% 1945	AO	95	3 3 2	3 15 8
Nigeria 4% 1963	AO	110	3 12 9	3 8 4
Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 4
South Africa 3½% 1953-73	JD	101	3 9 4	3 8 4
Victoria 3½% 1929-49	AO	98	3 11 5	3 14 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	86	3 9 9	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 3
*Essex County 3½% 1952-72	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83½	3 11 10	—
Manchester 3% 1941 or after	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920-49	MJSD	94	2 13 2	3 2 2
Metropolitan Water Board 3% "A" 1963-2003	AO	87¼	3 8 7	3 9 9
Do. do. 3% "B" 1934-2003	MS	87	3 9 0	3 10 2
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950-70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	84½	3 11 0	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	106	3 15 6	—
Gt. Western Rly. 4½% Debenture	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture	JJ	128½	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124xd	4 0 8	—
Gt. Western Rly. 5% Preference	MA	116½xd	4 5 10	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 12 1
Southern Rly. 5% Guaranteed	MA	125xd	4 0 0	—
Southern Rly. 5% Preference	MA	114½xd	4 7 4	—

*Not available to Trustees over par.

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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‡ Approximate Yield with redemption	£ s. d.
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